

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 L-03 SCA-01 JUSE-00 CIAE-00 INR-10

NSAE-00 RSC-01 DRC-01 /042 W
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R 180930Z JUN 74

FM USMISSION BERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 3531

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BERLIN 1019

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BRUECKMANN CASE

REF: BERLIN 944

1. SUMMARY: IN WEEK SINCE KAMMERGERICHT'S DECISION CONFIRMING ITS EXTRADITION ORDER, VARIOUS PARTIES INTERESTED IN BRUECKMANN CASE HAVE OFFERED VARIOUS INTERPRETATIONS OF DECISION, AND SUGGESTED RANGE OF NEXT STEPS. CASE IS OFF FRONT PAGES, WITH GENERAL IMPRESSION THAT GIRL WILL BE IN WEST BERLIN JAIL FOR MANY MORE MONTHS BUT THAT SHE WILL NOT BE RETURNED TO GDR. END SUMMARY.

2. AS REPORTED REFTTEL, FIRST REACTION OF SENAT AND BERLIN POLITICIANS TO KAMMERGERICHT'S SURPRISE REAFFIRMATION OF ITS PREVIOUS DECISIONS WAS THAT COURT SHOULD NOT BE CRITICIZED BUT THAT DECISION DEMONSTRATED NEED TO AMEND 1953 LAW ON INNER-GERMAN LEGAL ASSISTANCE IN CRIMINAL MATTERS TO REFLECT REALITY OF NATIONAL DIVISION. GOVERNING MAYOR INFORMED ALLIED COMMANDANTS AND MINISTERS JUNE 12 THAT SENAT STILL BELIEVED IT POLITICALLY IMPOSSIBLE FOR GIRL TO BE RETURNED TO FACE TRIAL IN GDR, ALTHOUGH HE VOLUNTEERED SHE WAS NOT A VERY ATTRACTIVE PERSONALITY. HEAD OF SENAT POLITICAL OFFICE CONFIRMED TO
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MISSION OFFICER SAME DAY THAT ONLY QUESTION WAS HOW TO USE TIME

BEFORE DECISION OF STRASBOURG HUMAN RIGHTS COMMISSION (NOT EXPECTED FOR BETTER PART OF YEAR) TO DEVELOP POLITICALLY AND LEGALLY ACCEPTABLE ALTERNATIVE TO EXTRADITION. HEAD OF SENAT CHANCELLERY SAID THAT SENAT HAD ALREADY PASSED PROPOSAL TO FRG MINISTER OF JUSTICE FOR AMENDMENT OF 1953 LAW TO PROVIDE MORE DISCRETION FOR PUBLIC PROSECUTOR AND TO PERMIT KAMMERGERICHT TO TAKE ACCOUNT OF MORE FACTORS, INCLUDING POLITICAL REALITIES RELATING TO POSSIBILITY THAT EXTRADITION OF PERSON MIGHT BE SOUGHT BY GDR FOR POLITICAL AS WELL AS LEGAL REASONS. PRESS REPORTED THAT SENATOR FOR JUSTICE KORBER CONFIRMED TO HOUSE OF REPRESENTATIVES JUNE 13 THAT SENAT DID NOT ENVISAGE TURNING BRUECKMANN OVER TO GDR. KORBER ALSO QUOTED AS SUGGESTING SIMPLEST PORCEDURE MIGHT BE FOR FRG TO REPEAL 1953 LAW THUS REMOVING LEGAL BASIS FOR EXTRADITION.

3. PRESS ALSO REPORTED JUNE 14 INTENTION OF FEDERAL GOVERNMENT TO ADVANCE PROPOSALS OF ITS OWN FOR REVISIONS IN 1953 LAW. (CDU/CSU TABLED SEVERAL MONTHS AGO PROPOSAL WHICH WOULD PERMIT APPEAL FROM HIGHEST LAND COURT TO FEDERAL SUPREME COURT (BUNDESGERICHTSHOF) IN CASES DEALING WITH EXTRADITION TO GDR. CDU/CSU AMENDMENT WOULD HAVE RETROACTIVE EFFECT AT LEAST TO THOSE CASES WHERE FINAL DECISION OF LAND COURT HAD NOT YET BEEN EXECUTED IN ORDER TO COVER BRUECKMANN SITUATION.)

4. PRESS HAS GENERALLY SHOWN UNDERSTANDING FOR ALLIED ACTIONS, BUT SPRINGER PAPERS AND JUNE 10 EDITION OF "DER SPIEGEL" HAVE CRITICIZED SEVERELY KAMMERGERICHT. THEY ARGUED THAT BERLIN COURT WAS STIFF-NECKED IN UNWILLINGNESS TO ADMIT PREVIOUS "MISTAKE," WITH RESULT THAT LEGAL UNITY BETWEEN WEST BERLIN AND FRG DAMAGED AND BERLINERS' CONSTITUTIONAL RIGHTS WEAKENED.

5. BRUECKMANN'S ATTORNEY HAS SOUGHT TO KEEP POT BUBBLING WITH LETTERS TO ALLIED AUTHORITIES, WHICH HE IMMEDIATELY LEAKED TO PAPERS. IN FIRST LETTER, ADDRESSED TO BRITISH AND FRENCH COMMANDANTS, LAWYER COMPLAINED THAT THEY WERE VIOLATING EUROPEAN HUMAN RIGHTS CONVENTION, TO WHICH THEIR GOVERNMENTS WERE PARTY, BY POSITION THEY HAD TAKEN ON CASE AND THREATENED THAT UNLESS THAT POSITION WAS CHANGED HE MIGHT HAVE TO FILE COMPLAINT AGAINST UK AND FRANCE IN CONFIDENTIAL

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STRASBOURG. IN LETTER TO ALL THREE COMMANDANTS, LAWYER URGED THAT, AS ALLIES HAD ALREADY EXHIBITED INTEREST IN CASE BY INTERVENING TO PREVENT KAMMERGERICHT FROM TAKING ACCOUNT OF KARLSRUHE COURT'S DECISION, ALLIES SHOULD EXERCISE THEIR RESERVED RIGHTS AND RESPONSIBILITIES BY ESTABLISHING SPECIAL ALLIED COURT TO TRY BRUECKMANN IN WEST BERLIN. ALLIED MISSIONS HAVE DEVELOPED BRIEF TEXT (PARA 6 BELOW) WHICH WOULD BE SENT TO LAWYER BY CHAIRMAN OF AK LEGAL COMMITTEE

AS REPLY TO BOTH LETTERS. BRITISH HAVE INDICATED THEY
SENT TEXT TO THEIR EMBASSY FOR CONCURRENCE.

6. BEGIN TEXT: I HAVE BEEN INSTRUCTED BY THE COMMANDANT
OF THE FRENCH SECTOR OF BERLIN, IN HIS CAPACITY AS CHAIRMAN
COMMANDANT, TO REPLY TO YOUR TWO LETTERS OF 6TH AND 7TH
JUNE 1974 RESPECTIVELY.

THE ALLIED KOMMANDATURA DOES NOT CONSIDER THAT YOUR
LETTERS RAISE ANY NEW POINTS WHICH NECESSITATE A MODIFICATION
OF ITS POSITION MADE KNOWN IN ITS LETTER OF 6 JULY, 1973 TO
YOU AND IN THE CERTIFICATE OF THE BRITISH COMMANDANT OF
29TH MAY 1974 REQUESTED BY THE BERLIN KAMMERGERICHT CONCERNING
THE NON-COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT
FOR BERLIN MATTERS.

THE DECISION AS TO WHETHER OR NOT FRAULEIN BRUECKMANN
IS TO BE HANDED OVER TO THE GDR AUTHORITIES REMAINS ONE
SOLELY FOR THE COMPETENT AUTHORITIES IN BERLIN UNDER THE
RELEVANT LEGISLATION IN FORCE IN BERLIN. END TEXT
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, TRIALS, COURTS
Control Number: n/a
Copy: SINGLE
Draft Date: 18 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: WorrelSW
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BERLIN01019
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740158-0403
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740637/aaaabfnu.tel
Line Count: 136
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: BERLIN 944
Review Action: RELEASED, APPROVED
Review Authority: WorrelSW
Review Comment: n/a
Review Content Flags:
Review Date: 22 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 APR 2002 by cunninfx>; APPROVED <13 MAR 2003 by WorrelSW>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BRUECKMANN CASE
TAGS: PGOV, WB, GC, GE, (BRUECKMAN, INGRID)
To: BONN
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005